

REMARKS

Claims 1, 2 and 5 – 18, 21 and 22 are currently pending in the case. Claim 1 has been amended to include the subject matter of Claims 2 and 3; and Claim 2 has been amended to place the claim in independent form and to include the subject matter of Claim 1 and 4. Claim 22 is newly added and finds support in the application as handle 11 in Figure 2.0. Claims 3, 4, 19 and 20 have been cancelled.

In the outstanding Office Action, the Examiner rejected all of the claims in view of newly cited references. Claims 1 - 4; 12, 15, 17 and 19 - 21 were rejected as being anticipated by the newly cited Vaughan et al. U.S. Patent (No. 3,687,412) under 35 U.S.C. 102(b) (hereinafter referred to as “Vaughan”); rejected Claims 5 – 7, 11, 16 and 18 as being obvious over the newly cited Vaughan patent in view of the newly cited Stehm US Patent (No. 1,100,452); rejected Claims 8 – 10 as being obvious over the newly cited Vaughan patent in view of the newly cited Stehm US Patent (No. 1,100,452) and in view of newly cited Moore U.S. Patent (4,131,405); and rejected Claims 13, and 14 as being obvious over the newly cited Vaughan patent in view of newly cited Moore U.S. Patent (4,131,405).

By this Response, Applicant has amended only independent Claim 1 and now independent Claim 2, and respectfully traverses the Section 102(b) and 103 rejections. It is submitted that no new matter has been entered into the claims by these amendments.

Rejections under 35 U.S.C. 102(b)

The Examiner rejected Claims 1 - 4; 12, 15, 17 and 19 - 21 as being anticipated by the newly cited Vaughan.

RESPONSE

To anticipate a claim, a single reference must contain every element of the claim. Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 USPQ 81, 90 (Fed. Cir. 1986). “The standard for lack of novelty, that is, for ‘anticipation,’ is one of strict identity.” 1 Chisum on Patents §3.01. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. Of Ca., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the case of Verve, LLC v. Crane Cams, Inc., 311 F.3d 1116, 1120, 65 USPQ2d 1051 (Fed. Cir. 2002) the court said that “A single reference must describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art,” citing In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) (“the reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it”). The Federal Circuit decisions have repeatedly emphasized that anticipation is established only if (1) all the elements of an invention, as stated in a patent claim, (2) are identically set forth, (3) in a single prior art reference. The Federal Circuit decisions have also, explicitly or implicitly, rejected

any standard of "substantial identity." Thus, an anticipation rejection under Section 102 must have a single reference in which each of the claimed features are disclosed in that reference.

A. With respect to Claim 3 (Presently Amended Claim 1 incorporates the limitations of Claim 3), the Examiner stated:

[T]he adjustment means includes a threaded bore associated with the abutment (Fig. 2) and a threaded shaft forming at least in part the strut which is received by the threaded bore so that rotation of the shaft relative to the bore caused adjustment of the strut and the side form relative to the abutment (Fig. 2; column 3, lines 60-68).

Reply

Reconsideration and withdrawal of the rejection of Claim 1 and those claims dependent thereon are respectfully requested for the following reasons.

Applicant submits that Vaughan does not disclose the features of the present Claim 1. Independent Claim 1 recites a formwork system for use in casting prefabricated panels, which includes, *inter alia*, "a plurality of side forms" and a plurality of brace structures which brace the side forms. These brace structures have "adjustment means for permitting adjustment of the position of each side form on the platform *to adjust the length and width dimensions of the panel to be cast.*" (Emphasis added). These adjustment means are claimed as including a threaded bore associated with the abutment and a rotating threaded shaft forming at least in part the strut received by the threaded bore. Although the Examiner states that Vaughan has a threaded shaft received by the

threaded bore, Vaughn does not disclose a threaded shaft that rotates. Rather Vaughan discloses a rotating nut that linearly moves a non-rotating shaft. The difference in the present invention is important in that the moving force is created by an entire shaft that provides strength, reliability, non-binding, and easy alignment all in one non-complicated moving means.

Newly added Claim 22 claims a member directly connected to the shaft to cause the shaft to rotate. This member in the disclosed embodiment is handle 11 in Figure 2.0. This claim reinforces the simplicity, yet strength and reliability inherent in the claimed structure of Claim 1.

Neither the rotating shaft nor the member that rotates the shaft is disclosed in the Vaughan

B. With respect to Claim 4 (Presently Amended Claim 2 incorporates Claim 4), the Examiner stated:

[T]he adjustment means includes an edge (distal edge from side form) about which the strut can pivot, a height adjuster (35) is located at a distal end of the strut for adjusting the position of the distal end of the strut relative to the sub-structure, a proximal end of the strut engages the side form (via 20) so that elevating the position of the distal end of the strut creates a clamping force at the proximal end of the strut clamping the side form in position on the platform (column 3, lines 31-35).

Reply

Reconsideration and withdrawal of the rejection of Claims 2 and 4 and those claims dependent thereon are respectfully requested for the following reasons.

Applicant submits that Vaughan does not disclose the features of the present Claim 1.

Independent Claim 1 recites a formwork system for use in casting prefabricated panels, which includes, *inter alia*, “a plurality of side forms” and a plurality of brace structures which brace the side forms. These brace structures have “adjustment means for permitting adjustment of the position of each side form on the platform *to adjust the length and width dimensions of the panel to be cast.*” (Emphasis added). These adjustment means are claimed as including an edge associated with the abutment about which the strut pivots, a height adjuster is located at a distal end of the strut for adjusting the position of the distal end relative to the sub-structure, a proximal end of the strut engages the side form so that elevating the position of the distal end creates a clamping force at the proximal end.

Thus, in relation to the embodiment of the present invention as disclosed in Figure 3,0, the strut is horizontal lever 14 that pivots about a vertical hollow section 7 when a threaded vertical shaft 17 attached to a distal end of lever 14 is rotated.

On the other hand, Vaughan simply does not have the claimed structure irrespective of the arguments of the Examiner. As stated in the section quoted by the Examiner, Column 3, lines 32-35, the struts are raised or lowered, not pivoted as claimed (“an edge associated with the abutment about which the strut pivots”). Thus, original Claim 4, now incorporated into Claim 2, cannot be anticipated because the reference does not show a pivoting structure.

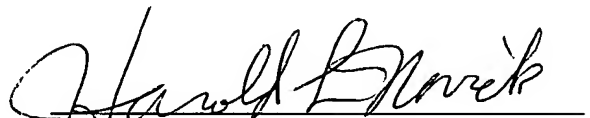
C. All of the remaining claims are dependent on either Claim 1 or Claim 2, and thus are patentable for the reasons stated above with respect to those claims.

CONCLUSION

In light of the foregoing, Applicant submits that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,



Harold L. Novick
Registration No. 26,011
Customer No. 20529

Date: August 28, 2008
THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314
(703) 548-6284